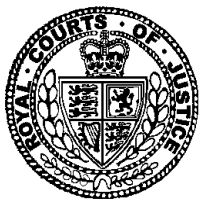

Neutral Citation Number: [2021] EWHC 3380 (Fam)

Case No: NG20C00081

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 02/07/2021

Before :

MRS JUSTICE LIEVEN

- -

Between :

NOTTINGHAM UNIVERSITY HOSPITALS NHS TRUST

Applicant

and

M

(by his Children's Guardian, Leonie Cobham) [1]

NOTTINGHAM CITY COUNCIL [2]

KS [3]

MS [4]

Respondents

- -

- -

Miss Emma Sutton (instructed by **Nottingham University Hospitals NHS Trust**) for the **Applicant**

Miss Linda Turnbull (instructed by **Cafcass**) for the **First Respondent**

Mr Andrew Neaves (instructed by **Nottingham City Council**) for the **Second Respondent**

Mrs Lucy Winterburn (instructed by **Bhatia Best**) for the **Third Respondent**

Mr Dalal (instructed by **Hawley and Rodgers**) for the **Fourth Respondent**

Hearing dates: **2 July 2021**

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Approved Judgment

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MRS JUSTICE LIEVEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Lieven :

1.
This is an application concerning M, a boy, age 13. The application before me was made on 29 June 2021 by Nottingham University Hospitals NHS Trust for a declaration that it is lawful and in the best interests of M to be deprived of his liberty whilst an inpatient of the Trust, and for his conveyance to and from Trust premises. The application was made as M has the right to liberty and cannot be deprived of his liberty save in accordance with a procedure prescribed by law (per Article 5(1) ECHR), and without coming to court for authorisation of his deprivation of liberty, having regard to the particular facts of this case.

2.
Miss Sutton represents the applicant Trust, Miss Turnbull represents the first respondent, through his Guardian, Mr Neaves represents the second respondent Local Authority, Mrs Winterburn represents the third respondent mother, and Mr Dalal represents the fourth respondent father.

3.
The case concerns serious medical treatment for M. The application is supported by the Guardian, Ms Leonie Cobham, the Local Authority, and, subject to some changes to the care plan, by M's mother, the third respondent. M's father does not object to the proposed medical treatment but does not support the chemical restraint that is sought.

4.
The Local Authority share parental responsibility for M with his parents because M is subject to an interim care order and there are extant public law care proceedings before the Family Court. I have seen the judgment of Her Honour Judge Clarke after a fact finding hearing on 6 April 2021, and I therefore have some knowledge of the background to this case. I should say that the Trust has not seen that judgment, or any of the papers in the care proceedings.

5.
The background to the case is that M has been diagnosed as having the following conditions:

(1) Granulomatosis Polyangiitis ('GPA'). This was diagnosed in January 2020 and is a very rare auto-immune condition with significant morbidity/mortality if treatment is not given in a timely manner. For M it is further complicated by subglottic stenosis, hearing deficit and pulmonary nodules;

(2) M has a tracheostomy in situ due to narrowed trachea (as a result of the GPA disease process and linked inflammation/scarring);

(3) M has a port-a-cath which is a device that is used to allow his medication to be given. However M has refused on multiple occasions for this to be subject to routine flushes (to allow the port-a-cath to

be kept clean and the area around it). As it has not be able to maintain it, and as there is a risk of infection, this now requires surgical removal;

(4) M has been diagnosed since 2009 with Type 1 diabetes;

(5) M was diagnosed in 2018 with autoimmune hypothyroidism;

(6) M has hypogammaglobulinemia;

(7) M has significant longstanding behavioural issues which affect his compliance with medical care, to which I will return.

6.
M has been subject to social care involvement since the age of 2 and has at times been under a Child Protection plan. The background to the interim care order relates to poor attendance at healthcare appointments and the parents lack of support for that attendance. M was admitted to a local hospital in 2020 following a protracted deterioration in his health, and he was diagnosed with GPA. The parental ability to manage his health was called into serious question at that time, and an interim care order was made in April of this year.

7.
Since that date, M has spent some time in hospital (having been initially discharged in May 2020) but was readmitted with breathing difficulties and underwent an emergency tracheostomy. Sadly, M's behaviour has been extremely challenging during both of his previous admissions to the local hospital and it was often required for security staff to apply safe holds in his best interests. M damaged the ward areas and side rooms including causing flooding and pulling equipment from the walls. In addition, M would display aggressive behaviour both verbally and physically, including biting and hitting staff; especially when he was reluctant to follow instructions.

8.
M does not have a diagnosis of a mental health difficulty and his engagement with CAMHS has been limited, at times, through his own choice. No party seeks to argue that M is competent (in the Gillick sense) to make decisions regarding the proposed medical treatment and investigations, and it is on that basis that I have proceeded.

9.
M has been in a foster placement since late 2020, and it is relevant to note that although there have been periods when he patently did very well in foster care, his behaviour has since deteriorated severely and his foster carers served notice on the Local Authority for M to leave the foster placement at the beginning of June. I make it absolutely clear that there is no criticism of the foster carers for acting in the way they did as they had real concerns about the safety of their own daughter and had to put a lock on her bedroom door.

10.
The current urgent need is due to M's refusal to engage in the proposed treatment, and, in particular, his refusal to allow the port-a-cath to be flushed. As a consequence, this is no longer usable and there is a high risk that M may not receive his next dose of treatment for GPA. The regularity of this medication is critical, and if he does not have that, very serious consequences could follow. Additionally, the longer the port-a-cath remains in situ not being used, the greater the chance that it could become infected.

11.
In the light of the fact that for those medical reasons M is going to have to be admitted for inpatient hospital treatment under a general anaesthetic to surgically remove the port-a-cath, it was thought sensible, and in M's best interests, for various other medical procedures and investigations to be undertaken at the same time. This has resulted in the need to coordinate between a number of different clinicians of different disciplines, the Local Authority, the Guardian, and M's parents.

12.
The consequence of this process is that this application was made, as I have said, on 29 June 2021 and came before me as a very urgent application for hearing today, the 2 July 2021. It is proposed that M will be admitted to hospital on 5 July 2021 and have treatment on 6 July 2021. I was extremely critical at the beginning of this hearing that this court was faced with a very late application, with inadequate time to consider the issues properly, and where there was limited time for the Guardian to consider the specific issues raised. With a heavy heart, I will say no more here, partly because I have said the same in another judgment recently. As acknowledged above, there was a need to coordinate between a number of different professionals in this case.

13.
The treatment to take place on 6 July 2021 is to include the following elements:

(1) Removal of the port-a-cath. The removal will take place by general anaesthetic, incising the scar over the port, removing the port, closing the skin with absorbable sutures and a local anaesthetic will be applied for post-operative recovery purposes;

(2) Insertion of the cannula to allow venous access whilst an inpatient during this admission to allow the GPA medication, Rituximab, to be given;

(3) Assessment of M's airways, including various specific investigations;

(4) Dental assessment and potential remedial works. There are serious concerns regarding M's teeth due to poor dental hygiene in the past, and in those circumstances, a paediatric dental team are to attend to carry out the necessary treatment.

14.
To the degree that it is relevant for me to do so, I have no reason to doubt that all of that treatment and investigations, are in M's best interests. However given M's very serious behavioural problems in the past and in hospital, it was thought necessary, and I agree with this, for a very detailed care plan to be prepared to cover how M is to be persuaded to go to hospital, what happens if he refuses to go, and what happens if he becomes distressed when he gets to hospital. The care plan proposed sets out a tiered approach, and only at the last possible stage would chemical restraint or physical restraint be used in hospital. The care plan also allows for the possibility of physical restraint in terms of taking M to and from hospital.

15.
I have heard during this hearing from counsel on behalf of all parties, but also directly from the Guardian and the social worker as to their views of what is in M's best interests. I accept that given the past history it is proportionate and necessary and appropriate for me to make the declarations sought by the Trust, specifically that it is lawful for chemical and physical restraint to be used if necessary, but that any restraint used must be the least possible level at any particular stage, and that it is proportionate to the situation in question.

16.
There has been consideration to the degree to which the mother should be involved over the weekend in talking to M, and both before and during this admission to hospital. One very troubling aspect to this case is that given the position of the foster carers, M will not be able to return to the foster placement when he is discharged from hospital. Although the Local Authority has arranged accommodation with a local specialist care provider, that can only be put in place from the 16 July 2021, therefore at the time I am giving this judgment, it is not known where M will be discharged to when he leaves hospital. It seems that M is aware that the foster carers have given the Local Authority notice of the placement ending, but that he is not aware that he will not return to the foster placement when he is discharged from hospital.

17.
The position I take, from hearing from counsel and the social worker and Guardian, is that it appears that the mother is at times a calming force for M, and may have a useful role in persuading him to go to hospital and preventing him from getting to upset. However there is also evidence that at some times there is the opposite effect upon M to his mother's involvement. The care plan has been amended this morning to include that M's mother should be fully involved and should only be asked to leave the hospital as a last resort (in effect). The Trust have also amended the care plan to include (for the avoidance of any doubt), that at all times, the mother and father should continue to be fully informed as to what is happening. Subject to those caveats, I agree the care plan which includes the provision of chemical and physical restraint within the hospital, and I agree to the provision regarding the potential of physical restraint being used for the purpose of getting M to and from hospital. That is my judgment.